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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 JOSE E. RODRIGUEZ,
12 CDCR # T-68300

13 Plaintiff,

14 vs.
15 DR. RAMSEY HOMER; DR. JAN MARIE
ALARCON; THOMAS MEJIA,

16 Defendants.

17 Civil No. 07-1928 JAH (WMc)

18 **ORDER DISMISSING ACTION FOR**
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)

19 **I. PROCEDURAL HISTORY**

20 On October 2, 2007, Plaintiff, a former state inmate currently detained as a civil
21 committee at Atascadero State Hospital, filed a civil rights Complaint pursuant to 42 U.S.C.
22 § 1983. In his original Complaint, Plaintiff alleged that a prison doctor provided him with a
23 “false” diagnosis, and another refused his requests to discontinue psychiatric medication during
24 his incarceration at Richard J. Donovan Correctional Facility in San Diego. Plaintiff further
25 alleged that the Board of Prison Terms (“BPT”) Commissioner Thomas Mejia violated his due
process rights during a 2007 placement hearing and “falsely imprisoned” him.

26 The Court granted Plaintiff’s Motion to Proceed *in forma pauperis* (“IFP”) but sua sponte
27 dismissed Plaintiff’s Complaint for failing to state a claim pursuant to 28 U.S.C.
28 §§ 1915(e)(2)(B) & 1915A(b). *See* Jan. 16, 2008 Order 9-10. Nonetheless, the Court provided

1 Plaintiff with the opportunity to correct the deficiencies of pleading by filing a First Amended
 2 Complaint. Plaintiff filed his First Amended Complaint (“FAC”) on February 29, 2008 [Doc.
 3 No. 4].

4 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

5 As the Court stated in its previous Order, the Prison Litigation Reform Act (“PLRA”)’s
 6 amendments to 28 U.S.C. § 1915 also obligate the Court to review complaints filed by all
 7 persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any
 8 facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law
 9 or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
 10 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under
 11 these provisions, the Court must *sua sponte* dismiss any prisoner civil action and all other IFP
 12 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim, or which
 13 seek damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A;
 14 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v.*
 15 *Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

16 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted *sua sponte*
 17 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However, 28
 18 U.S.C. § 1915(e)(2) and § 1915A now mandate that the court reviewing an IFP or prisoner’s suit
 19 make and rule on its own motion to dismiss before directing that the Complaint be served by the
 20 U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection 1915(e) not only permits,
 21 but requires a district court to dismiss an *in forma pauperis* complaint that fails to state a
 22 claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing
 23 § 1915A).

24 “[W]hen determining whether a complaint states a claim, a court must accept as true all
 25 allegations of material fact and must construe those facts in the light most favorable to the
 26 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
 27 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

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1 In his First Amended Complaint, Plaintiff alleges that his due process rights were violated
 2 when he agreed to a plea bargain that led to his civil commitment at Atascadero State Hospital.
 3 (FAC at 3.) While not entirely clear, Plaintiff appears to allege he never agreed to the civil
 4 commitment which was later made part of his plea bargain for unspecified criminal charges.
 5 (*Id.*) However, these claims amount to an attack on the constitutional validity of an underlying
 6 state criminal proceeding, and as such, may not be maintained pursuant to 42 U.S.C. § 1983
 7 unless and until he can show that conviction has already been invalidated. *Heck v. Humphrey*,
 8 512 U.S. 477, 486-87 (1994); *Ramirez v. Galaza*, 334 F.3d 850, 855-56 (9th Cir. 2003) (“Absent
 9 such a showing, ‘[e]ven a prisoner who has fully exhausted available state remedies has no cause
 10 of action under § 1983....’”) (quoting *Heck*, 512 U.S. at 489).

11 “In any § 1983 action, the first question is whether § 1983 is the appropriate avenue to
 12 remedy the alleged wrong.” *Haygood v. Younger*, 769 F.2d 1350, 1353 (9th Cir. 1985) (en
 13 banc). A prisoner in state custody simply may not use a § 1983 civil rights action to challenge
 14 the “fact or duration of his confinement.” *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The
 15 prisoner must seek federal habeas corpus relief instead. *Wilkinson v. Dotson*, 544 U.S. 74, 78
 16 (2005) (quoting *Preiser*, 411 U.S. at 489). Thus, Plaintiff’s § 1983 action “is barred (absent
 17 prior invalidation)--no matter the relief sought (damages or equitable relief), no matter the target
 18 of his suit (state conduct leading to conviction or internal prison proceedings)--if success in that
 19 action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson*,
 20 544 U.S. at 82.

21 In this case, Plaintiff’s claims “necessarily imply the invalidity” of his criminal
 22 proceedings and continuing civil commitment. *Heck*, 512 U.S. at 487. In creating the favorable
 23 termination rule in *Heck*, the Supreme Court relied on “the hoary principle that civil tort actions
 24 are not appropriate vehicles for challenging the validity of outstanding criminal judgments.”
 25 *Heck*, 511 U.S. at 486. More recently, the Ninth Circuit has held that the *Heck* favorable rule
 26 applies to civil commitment proceedings. *See Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1139
 27 (9th Cir. 2005). This is precisely what Plaintiff attempts to accomplish here. Therefore, to
 28 satisfy *Heck*’s “favorable termination” rule, Plaintiff must first allege facts which show that the

1 conviction and/or civil commitment which forms the basis of his § 1983 First Amended
 2 Complaint has already been: (1) reversed on direct appeal; (2) expunged by executive order;
 3 (3) declared invalid by a state tribunal authorized to make such a determination; or (4) called into
 4 question by the grant of a writ of habeas corpus. *Heck*, 512 U.S. at 487 (emphasis added); *see also* *Butterfield v. Bail*, 120 F.3d 1023, 1025 (9th Cir. 1997).

6 Plaintiff's First Amended Complaint alleges no facts sufficient to satisfy *Heck*. While
 7 Plaintiff alleges that he is no longer serving his criminal sentence, according to his First
 8 Amended Complaint he remains civilly committed at Atascadero State Hospital. (*See* Compl.
 9 at 1.) Thus, a suit for money damages based on his civil commitment is not yet cognizable.
 10 *Hufile*, 410 F.3d at 1140. Accordingly, because Plaintiff seeks damages for allegedly
 11 unconstitutional civil commitment proceedings, and because he has not, and apparently *cannot*
 12 currently show his conviction and/or commitment has been invalidated, either by way of direct
 13 appeal, state habeas or pursuant to 28 U.S.C. § 2254, a section 1983 claim for damages cannot
 14 be maintained, *see Heck*, 512 U.S. at 489-90, and his First Amended Complaint must be
 15 dismissed without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir.
 16 1995) (finding that an action barred by *Heck* has not yet accrued and thus, must be dismissed
 17 without prejudice so that the plaintiff may reassert his § 1983 claims if he ever succeeds in
 18 invalidating the underlying conviction or sentence); *accord Blueford v. Prunty*, 108 F.3d 251,
 19 255 (9th Cir. 1997).

20 **III. CONCLUSION AND ORDER**

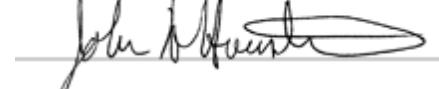
21 Good cause appearing, **IT IS HEREBY ORDERED:**

22 Plaintiff's First Amended Complaint is **DISMISSED** without prejudice both for failing
 23 to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and
 24 § 1915A(b). Moreover, because the Court finds amendment of Plaintiff's § 1983 claims would
 25 be futile at this time, leave to amend is **DENIED**. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d
 26 336, 339 (9th Cir. 1996) (denial of a leave to amend is not an abuse of discretion where further
 27 amendment would be futile); *see also* *Robinson v. California Bd. of Prison Terms*, 997 F. Supp.
 28 1303, 1308 (C.D. Cal. 1998) ("Since plaintiff has not, and cannot, state a claim containing an

1 arguable basis in law, this action should be dismissed without leave to amend; any amendment
2 would be futile.”) (citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996)).

3 The Clerk shall close the file.

4 DATED: April 11, 2008

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6 JOHN A. HOUSTON
7 United States District Judge

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